

1 THE HONORABLE BARBARA J. ROTHSTEIN
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BALANZA ASIA CO., LTD., a Hong Kong corporation,) IN ADMIRALTY AND AT LAW
11 v.) Plaintiff,) Cause No. 2:21-cv-01439-BJR
12 EXPEDITORS INTERNATIONAL OF WASHINGTON, INC., a Washington corporation,) STIPULATED MOTION FOR
13) CONTINUANCE OF CASE
14) SCHEDULE DEADLINES
15) Defendant.) **NOTE FOR MOTION:**
16) **June 16, 2022**

17 **I. INTRODUCTION AND RELIEF REQUESTED**

18 COME NOW both parties to this action, plaintiff Balanza Asia Co. Ltd. and defendant
19 Expeditors International of Washington, Inc. (“Expeditors”), and jointly request that the Court
20 extend all case schedule deadlines. This is the parties’ second request for a case schedule
21 continuance as is further explained below.

22 **II. FACTUAL BACKGROUND AND PROCEEDINGS**

23 This is one of two actions in this Court in which two shipper-interest plaintiffs have
24 sued Expeditors (the other is 2:21-cv-01184-JHC, in which a substantially similar motion will
25 be filed) seeking recovery of damages related to cargo lost on the vessel ONE AQUILA in a
26 common weather event at sea on October 30, 2020. Expeditors operated as a non-vessel
27 operating common carrier as defined by 46 CFR §515.2(k) and (m)(2) (“NVOCC”) in the

STIPULATED MOTION FOR CONTINUANCE OF CASE SCHEDULE
DEADLINES - 1
NO. 2:21-CV-01439-BJR
116719.0024/9004943.1

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1 shipments that are the subjects of both actions. As an NVOCC, Expeditors is a documented
 2 carrier of record, but does not itself transport cargo. Rather, it contracts with actual ocean
 3 carriers for the physical transport of the cargo its shipper customers book with it.

4 As an NVOCC, Expeditors contends any liability it might have to the plaintiffs in the
 5 two actions should be the responsibility of other documented carriers of record, and has
 6 brought indemnity suits against them in two actions pending in the Southern District of New
 7 York as required by contractual forum selection clauses. Expeditors' indemnity action against
 8 ocean carrier Hyundai Merchant Marine Company, Ltd. ("HMM"), SDNY No. 1:21-cv-09068-
 9 RA-OTW, relates to this action; and its indemnity action against defendant Ocean Network
 10 Express, Pte., Ltd. ("ONE"), SDNY No. 21-cv-08405-VSB-OTW, relates to Case No. 2:21-cv-
 11 01184-JCC.

12 Expeditors' challenge in defending plaintiffs' claims in this action and in Case No.
 13 2:21-cv-01184-JHC is that, as an NVOCC, it does not have the evidence or access to witnesses
 14 needed to defend the claims. It must obtain through discovery such evidence from "upstream
 15 carriers" such as HMM and ONE. Expeditors has sought discovery, including FRCP 30(b)(6)
 16 depositions, from HMM and ONE in the two SDNY actions mentioned above, but has not yet
 17 obtained it as explained below.

18 The discovery deadline in both this action and 2:21-cv-01184-JHC is August 1, 2022.
 19 Following an initial discovery conference on December 17, 2021 in SDNY Case No. 21-cv-
 20 08405-VSB-OTW, the SDNY set a case schedule with discovery closing in that matter on
 21 August 26, 2022. A copy of that order is attached. Expeditors urged, and the court accepted,
 22 this date so that it would be roughly concurrent with the discovery deadline in the two actions
 23 in this Court, thereby ensuring that Expeditors could obtain necessary discovery in time to use
 24 it.

25 On May 6, 2022, the SDNY issued an order consolidating for discovery purposes and
 26 superseding prior Initial Case Management Scheduling Orders in three SDNY ONE AQUILA
 27 actions, including the two brought by Expeditors. A copy of that order is attached.

1 On June 8, 2022, after holding a status conference of all counsel, the SDNY issued an
 2 order staying discovery in 1:21-cv-09068-RA-OTW through July 30, 2022 (not stating when it
 3 will be reopened), which is the indemnity action Expeditors filed related to the instant action.
 4 A copy of the order is attached. That order also provides that fact discovery in 21-cv-08405-
 5 VSB-OTW will close on August 15, 2022, but it sets a motion briefing schedule to address the
 6 parties' discovery disputes that might result in further delays. Counsel for ONE in that action
 7 has asserted that he is unable to obtain discovery information and documentation within the
 8 stated timeframe. See attached correspondence to SDNY from all counsel, including counsel
 9 for ONE. Thus, it remains uncertain whether Expeditors will be able to obtain the necessary
 10 discovery under the existing deadline.

11 On April 22, 2022, the parties hereto jointly moved for a case schedule continuance in
 12 this matter as a result of obstacles Expeditors was facing in the SDNY actions obtaining
 13 information its expert required. The Court granted that motion, and set case schedule deadlines
 14 as follows:

Reports from expert witness under FRCP 26(a)(2) due	June 17, 2022
Reports from rebuttal expert witnesses	July 18, 2022
Discovery completed by	August 1, 2022
All dispositive motions must be filed by	August 15, 2022
Rule 39.1 Mediation deadline	September 30, 2022
All motions <i>in limine</i> must be filed by	November 7, 2022
Joint Pretrial Statement	November 14, 2022
Pretrial conference	November 28, 2022
Length of Bench Trial	1-2 days
Bench Trial Date	December 12, 2022

24 Because of SDNY's recent consolidation of ONE AQUILA matters for discovery
 25 purposes; staying of discovery; and ordering a discovery motion briefing schedule, Expeditors'
 26 challenges in obtaining necessary discovery are ongoing, and it is not confident it will obtain it
 27 from the ocean carriers in time to make use of it in the instant action by the current case

1 schedule deadlines. Plaintiffs in both actions before this Court have agreed to join Expeditors
 2 in its current request for another case schedule continuance. The parties propose that the
 3 scheduling order in this case be modified as follows:

Reports from expert witness under FRCP 26(a)(2) due	September 16, 2022
Reports from rebuttal expert witnesses	October 17, 2022
Discovery completed by	October 31, 2022
All dispositive motions must be filed by	October 31, 2022
Rule 39.1 Mediation deadline	November 30, 2022
All motions in limine must be filed by	December 12, 2022
Joint Pretrial Statement	January 26, 2023
Pretrial conference	February 13, 2023
Length of Bench Trial	1-2 days
Bench Trial Date	February 27, 2023

III. AUTHORITY

15 The parties request this extension of deadlines pursuant to FRCP 6(b)(1)(A), which
 16 provides:

17 When an act may or must be done within a specified time, the court may, for
 18 good cause, extend the time: with or without motion or notice if the court acts,
 or if a request is made, before the original time or its extension expires.

19 FRCP 6(b)(1) should be “liberally construed to effectuate the general purpose of seeing that
 20 cases are tried on the merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258-59 (9th
 21 Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983)). The phrase “good
 22 cause,” used frequently in our legal system, “means little more than that there is a good reason
 23 for . . . the action proposed to be taken.” *California Trout v. Fed. Energy Regulatory Comm’n*,
 24 572 F.3d 1003, 1027 (9th Cir. 2009). An extension requested under FRCP 6(b)(1) “normally
 25 will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to
 26 the adverse party.” *Id.*, at 1027 n.1.

Here, Expeditors is coordinating complex litigation relating to the same loss of cargo across two districts and is simply attempting to litigate the merits of the cases in the most efficient manner. Expeditors is acting in good faith and actively pursuing the discovery related to its claims before this Court. Plaintiff concurs by joining in this motion.

IV. CONCLUSION

Given the extraordinary circumstances presented above, and that the parties are in agreement, the Court should grant the requested case schedule continuance.

Respectfully submitted this 16th day of June, 2022.

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ORDER

The parties having so stipulated, and the Court finding good cause for entry hereof,

NOW THEREFORE, IT IS HEREBY ORDERED that the case schedule be modified in

accordance with the dates listed above.

Dated this 24th day of June, 2022.

Barbara J Rothstein

Honorable Barbara J. Rothstein
United States District Court Judge